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## CENTRALIZATION IN THE FEDERAL GOVERNMENT.

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THE perpetuity of the American Government is an object of supreme concern to every American. This Government took a century and a half to build; and when it was finished, and our fathers, after their long and painful toil, turned to look at the work of their hands, and beheld its massive foundations and its fair proportions, they were wont, in their enthusiasm, to exclaim, *Esto perpetua!* It is for us, their children, to preserve it. To keep it as it was designed, is one of the greatest political problems of our time. There can hardly be a greater, since it affects the welfare not only of all the millions born and to be born between these oceans, but of all elsewhere, who might profit by their example. Why should we, as Americans, desire this perpetuity? Why should others, not our countrymen, desire it? Because, of all the bodies politic that ever existed, this is the only instance of a Federative Union as wide as a continent; and because, more than any other government in the world, it offers an asylum to the people of other lands, and promises to all ample protection with the largest freedom.

By the American Government, I mean that mixed system of national and State organizations which found their last and best expression in the Constitution of the United States. The vital principle of this system is the balancing of the governments,

national and State, in such manner as to hold them forever in equipoise. The annals of the colonies, and of their intercolonial transactions; their joint labors and sacrifices, both before and after their independence; and the history of the Federal Constitution from the first conception to the completion of the great design, are so many testimonies to the gradual unfolding and final development of this principle.

The Declaration of Independence was the joint act of independent States, then first styling themselves the United States of America. The Articles of Confederation, proclaiming on their face that they were articles of confederation and perpetual union, began with declaring that "each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States in Congress assembled." And when, ten years later, "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty" to themselves and their posterity, the people of the same States established the present Constitution, they provided, not that *all* legislative powers, but that "all legislative powers *herein granted*," should be vested in Congress; then carefully enumerated these powers, under seventeen distinct heads; declared that the States should have a separate and equal representation in the Senate, and should act separately in choosing the President; and finally, that no amendment should deprive any State, without its consent, of its equal suffrage in the Senate. Not content with this, the First Congress under the Constitution proposed ten amendments, preceded by this preamble: "The Conventions of a number of States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, and as extending the ground of public confidence in the Government, will best insure the beneficent ends of its institution"; after which preamble, the amendments were specified, and they were all adopted, one of which was the following: "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*" The men who framed this Constitution, they who in the several State conventions ratified it, and they who sat in the First Congress, were persons of as much

learning, experience, sagacity, and probity, as any equal number of persons that have ever lived in the world. They were grave and thoughtful men; they understood the temper and the wants of their own people; their hopes and fears had been tried and chastened in field and council; they had studied the political systems of other countries and ages; and they acted under a sense of the gravest responsibility that could rest upon the human conscience. There sat Washington, Franklin, King, Sherman, Hamilton, Livingston, Morris, Madison, and Pinckney. If they were not able to judge aright, where shall be found those who can?

They were right. They were right for their time; and if, with prophetic vision, they could have looked forward into ours, they would have been more than ever confirmed in their opinion. Each State was then independent of the others; each had its own traditions, wants, and policy. Massachusetts, whose towns had been little republics from the first settlements, would no more have thought of subjecting those towns, for their domestic concerns, to the rule of Virginia, than of sinking Boston in the waters of Massachusetts Bay. New York, which had her feet already planted at the entry of the sea, would as soon have thought of turning the Hudson backward upon the lakes, as of giving over to her sister States the unlimited control of her river valley and her imperial haven; and Virginia, which did more than any other State for the establishment of the Constitution, would have expected the closing of the Chesapeake by a fence of stone, from headland to headland, as soon as the assumption by New York and Massachusetts of the power to regulate the counties and parishes of the old cavalier Commonwealth.

We have now lived nearly a century under this Constitution. Three generations have come and gone since Washington took the oath as first of the Presidents. Is it not time to take soundings that we may see where we are?

We see first that the Federal Government has overshadowed the State governments. In dignity, in honor, in emoluments, the officers of the nation have borne the palm from the officers of the States, however large the functions of the latter, or however high their stations. A State senator of New York has a function more important and a larger constituency than a representative in the Lower House of Congress; yet how few young

men, ambitious of distinction, are to be found who would not prefer the latter! We have even seen governors of States stepping from their executive chambers into Federal post-offices and custom-houses. How different from the time when it was a point of etiquette between Washington, as President of the United States, and Hancock as Governor of the State of Massachusetts, which, both being in Boston, should make the first call on the other. We have now at last seen the legislature of a State thanking the President in the name of its people for appointing one of its citizens to a place in his cabinet!

It is not, however, in forms or in matters of dignity, or honor, or emolument, that the distinction between the national and State governments appears in its strongest contrast. It is in the exercise of substantial power.

We need give but a few examples. A single encroachment submitted to or enforced against resistance is an invitation to other encroachments. Hardly had Washington left the presidency when, on the 14th of July, 1798, a statute was passed by Congress for the punishment of libel upon the Federal Government, either House of Congress, or the President. If this were within the competency of Congress, the punishment of libel upon any officer of the United States would be equally within its competency. Indeed, it is not easy to perceive why Congress might not take upon itself all remedies, criminal and civil, for any wrong done to the good name, person, or property, of any Federal officer, and send the parties before Federal courts for trial. Can there be a doubt that such an assumption of power was never dreamed of by those who framed or those who ratified the Federal Constitution? That statute, by its own limitation, expired with the administration of the elder Adams, and was one of the causes which led to the overthrow of the Federal party at the beginning of the century. The Democratic party then took possession of the Federal Government, and kept it until the younger Adams came into the presidency, in 1824. After him came Jackson for eight years, then Van Buren for four, Harrison and Tyler four, Taylor and Fillmore four, Pierce four, and Buchanan four. The relations between the Federal and State governments during all these periods continued without material change, except in respect of the tariff. Under color of levying customs duties at sea-ports, Congress has taken control of nearly the whole industry of the country. There is not a city in any of

the States, there is not a village along the rivers, and scarce a hamlet among the hills, that does not look to Congress more than to its own legislature to determine the occupations of its people. Mills all over the land are built or left to decay, furnaces are lighted or extinguished, as parties or factions, or the shifting influences of private interests, swing to and fro at Washington. Under color of managing the national finances, Congress has covered the land with national banks, and placed them beyond the State courts or any State control. There are more than two thousand of them already. Under color of establishing post-offices and post-roads, and regulating commerce, Congress has passed a statute which gives to telegraph corporations, created by one State, the power of placing their lines along all post-routes in other States, without their consent and even against their will. Under color of the power to make regulations about the manner of holding elections for representatives, Congress has passed a statute providing for the appointment of supervisors and deputy marshals to attend the places of registry and of voting when representatives are to be chosen, and "to inspect and scrutinize from time to time, and all times on the day of election, the manner in which the voting is done, and the way and method in which the poll-books, registry-lists, and tallies or check-books, whether the same are required by any law of the State, or any State, territorial, or municipal law, are kept"; and to "scrutinize, count, and canvass each ballot in their election district or voting precinct cast, whatever may be the endorsement on the ballot, or in whatever box it may have been placed or found"; to preserve order at the polls, prevent "fraudulent voting," and to arrest persons guilty of it, whether the voting be for State or Federal officers. Under this statute there were more than fifteen thousand supervisors or deputy marshals surrounding the polls at the general election of 1876. And under the same statute, State officers have been punished by Federal courts for violating State laws.

Under color of enforcing the late amendment that no State "shall deny to any person the equal protection of the laws," Congress has authorized the punishment of the judge of a county court in Virginia for not placing colored men on the jury list, though the State legislature had made no discrimination. Under the same pretext, Congress has authorized the removal from a State court, before trial, of an indictment of a

colored person for murder, because in that State white men only are placed on the jury lists. Under color of protecting Federal officers in the discharge of their duties, Congress has authorized the removal from a State court, before trial, of an indictment for murder, on the allegation that the person indicted committed the homicide in the discharge of his duty as a revenue officer.

Worse than all, in flagrant defiance of the Constitution, and against the veto of the President, Congress, in March, 1867, placed the States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas under military rule, reducing them to the condition of subject provinces, opening the way to misgovernment by aliens and thieves beyond the dreams of Roman proconsuls, and then, with a refinement of irony in politics known only to those shameful days, declared that when the people of those States should have adopted new constitutions, and the same should have been approved by Congress, and *the legislatures* elected under them *should have ratified the Fourteenth Amendment, and that amendment should have been ratified by three-fourths of all the States*, then these disfranchised States should be entitled to representation in Congress! That is to say, Virginia, for example, should be treated as a State and not a State at the same time; a State good enough to vote for an amendment of the Constitution, and to bind other States by the vote, but not good enough to vote in the Senate, or to be represented in either House.

The President, in some instances, has outstripped Congress in encroaching upon the rights of the States. Under color of what was called his war-power, he seized and imprisoned citizens of States not in rebellion, their courts being all the while open, and in one instance was about to put three of them to death, which he was prevented from doing only by the Supreme Court of the United States. Under color of his office alone, without any treaty, or any act of Congress, or any judicial process, he seized and delivered up to Spain a Spanish subject, who had sought shelter on our shores; and under color of protecting a State against domestic violence, he turned out one legislature and put in another in three of the States.

Let us pause here to consider whither the legislation thus briefly described would lead us if it were persisted in. Two observations are to be made: one, that the acts are in themselves a displacement of State power far beyond anything written in the early

days of the Constitution, and probably far beyond anything then thought to be possible; and the other, that the theory on which they rest would, if carried out to its logical results, lead to the practical absorption in the central government of all the chief functions of sovereignty. Indeed, it has become fashionable of late to call the power of the States "police power," as if these great commonwealths which, according to the theory, divide the attributes of sovereignty with the United States, and which make most of the rules of property and of conduct under which we live, had been reduced to the condition of a body of police officers! "Police power," as if the making of a will were a function of police! Police power, indeed, of States which are not even permitted to guard their own polls by their own policemen!

I have said that the reasoning which supports the measures before mentioned would justify the virtual absorption of the chief functions of sovereignty. Take, for example, the Legal Tender Act, by which Congress enacted that a mortgage for the payment of ten thousand dollars might be paid, not in dollars, but in government promises to pay dollars, at a time when the promises were worth about a third as much as the dollars, and the Supreme Court sanctioned the enactment, not in the excitement of a war for existence, but in a time of profoundest peace. If the Federal Government may do this, what may it not do? There is no particular sanctity in a government promise; that of any other promisor would be warranted by the Constitution as well; and so it *might* be enacted that a debt could be paid in the promises of a national bank, or of any third person, nay, even those of a debtor himself. Then again, if Congress may remove into a Federal court an indictment against a revenue officer, in order to secure to him a fair trial, why may it not for the same reason provide that he shall not be indicted except in the Federal courts? and if this, why not go a step farther in the same direction, and give Federal officers the right to sue and be sued only in courts of the Union?—which is as much as to say that jurisdiction may be given to the courts of the United States over every suit, civil or criminal, by or against any person holding office under the United States. And, furthermore, if Congress can punish in Federal courts State officers for violating State laws, it may make removal from office a part of the punishment,



and it may punish unofficial citizens of the State for the same offenses; which is as much as to say that Congress may take upon itself the punishment of any offense against State laws. And if the United States may supervise all the details of an election held for different offices, because one of them is Federal, it may take complete control of the whole. At the late election, there were in this city eight ballot-boxes—five for State officers, two for Federal, and one respecting an amendment to the State Constitution. The Federal supervisors and marshals were empowered to examine every ballot in every box, as well those for President, members of Assembly, mayor, aldermen, State and city judges, and for or against the constitutional amendment, as that for members of Congress, to see that all were properly counted and returned, and to arrest for a false count or return, or what they thought to be such. The argument in support of this remarkable stretch of authority is that Congress has been empowered to regulate the manner of holding elections for representatives, though not for the President, and it is thence inferred, that in order that every lawful ballot for a representative in Congress may be counted, Congress may authorize the opening of all the boxes,—as well that for representatives as those for presidential electors, members of Assembly, mayor, and aldermen, state judges and about the constitutional amendment,—the examination and counting of every vote, and the arrest and punishment of any person who may cast any ballot into any box which he had no right to cast. The soundness of this reasoning is denied; but if it were sound, it would none the less show the tendency to centralization, and the danger of what is called a liberal construction of the Constitution. Congress has an undoubted right to collect duties on imports, but it has no right to foster one branch of industry at the expense of another; and when it uses its lawful power to accomplish indirectly what it cannot do directly, it violates the Constitution.

The power to create a Bank of the United States was hotly contested in the early days of the Government, but was finally affirmed by Congress, the President, and the Supreme Court. The result has been not one, but two thousand banks. This is sufficiently startling; but authority to create a corporation as a means of executing the power of Congress being once admitted, and the further authority to reach into and across the States in pursuance of the authority to regulate commerce under them

being also admitted, according to the decision in the Florida telegraph case, it should seem to follow, that Congress may enact a general law for the creation of as many corporations as promoters desire, to facilitate commerce by coastwise steamers, railways, or telegraphs, or may regulate these steamers, railways, and telegraphs itself. In short, it is possible, as we see, so to construe the Constitution of the United States as to reduce the States to insignificance. This is the outcome of the legislation of Congress and the decisions of the Supreme Court since the beginning of the civil war. These decisions, it must not be forgotten, are reasoned out of the doctrine that Congress is *the sole judge* of the means it may use to carry its express powers into effect. There was an expression in one of Marshall's opinions, hereafter quoted, which seemed to impose a very important limitation upon this Congressional discretion, thus: "Should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the Government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land"; but the words do not seem to have borne much fruit.

Whatever we may think of the soundness of the reasoning by which the various acts already mentioned (and there are others of like character) have been supported, there can be, as has been said, no doubt that they show a strong tendency toward centralization. This is not owing to any material change in the recorded opinions of lawyers and statesmen, respecting the theory of the Government. From first to last these opinions use nearly the same phrases as were used in the old times, however much the conclusions in particular cases may appear to be at variance with the opinions.

No matter how politicians may sneer at State rights, the most authoritative exponents in the later, not less than in the earlier times, even those most inclined to liberal interpretation, have agreed in upholding, theoretically at least, the reserved sovereignty of the States. Thus Chief-Justice Marshall said, in *McCullough* against Maryland, that

"No poetical dreamer was ever wild enough to think of breaking down the lines which separate the States, and of compounding the American people into one common mass."

And in another place he said:

"In America the powers of sovereignty are divided between the Government of the Union and those of the States. They are each sovereign, with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other." Again: "We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional." And finally: "But, were its necessity less apparent, none can deny its being an appropriate measure; and if it is, the degree of its necessity, as has been very justly observed, is to be discussed in another place. Should Congress, in the execution of its powers, adopt measures which are prohibited by the Constitution . . . But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the Government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power."

Mr. Justice Nelson, in the case of *The Collector against Day*, said:

"The general Government and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. The former, in its appropriate sphere, is supreme; but the States within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved,' are as independent of the general Government as that Government within its sphere is independent of the States."

In the case of *Texas against White*, Chief-Justice Chase said:

"Not only, therefore, can there be no loss of separate and independent autonomy to the States through their union under the Constitution, but it may be not unreasonably said that the preservation of the States and the maintenance of their governments are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union composed of indestructible States."

In the *United States against Cruikshank*, the present Chief-Justice said:

"The rights of life and personal liberty are natural rights of man. 'To secure these rights,' says the Declaration of Independence, 'governments are

instituted among men, deriving their just powers from the consent of the governed.' The very highest duty of the States, when they entered into the Union under the Constitution, was to protect all persons within their boundaries in the enjoyment of these 'inalienable rights with which they were endowed by their Creator.' Sovereignty for this purpose rests alone with the States. It is no more the duty, or within the power, of the United States to punish for a conspiracy to falsely imprison or murder, within a State, than it would be to punish for false imprisonment or murder itself."

And in Siebold's case, Mr. Justice Bradley said:

"The true doctrine, as we conceive, is this, that whilst the States are really sovereign as to all matters which have not been granted to the jurisdiction and control of the United States, the Constitution and Constitutional laws of the latter are the supreme law of the land; and when they conflict with the laws of the States, they are of paramount authority and obligation."

If these extracts, given at such length, serve no other purpose, they will at least explain, in official language, the true theory of our government, and, compared with the measures already detailed, will also explain how different from the theory has been the practice. How is this practice to be accounted for? In three words: power without responsibility. By responsibility is, of course, meant accountability to those who are to be affected by the exercise of the power. If there be one political truth more than another taught by history as by reason, it is that responsibility can never, without danger, be separated from power. "Little responsibility, then little power," is the maxim of free States.

We have reduced the responsibility of members of Congress to the minimum. Senators are responsible to their own States, representatives to their respective constituents. Here the responsibility in practice ends. What accountability does a senator from Nevada, for example, feel to the legislature or people of Massachusetts? What does a representative from a Michigan district care for the interests or wishes of a district of Florida, in comparison with the interests or wishes of his own? How, then, in the name of justice, can the senator from Nevada and the representative from Michigan be allowed to participate in the government of Massachusetts and Florida? For no other reason and to no greater extent than there are interests common to the four States, which must, of necessity, be regulated by all of them, and where, if they do not agree, the majority must decide.

These common interests are few in number. They were considered at the formation of the Constitution, and set down in carefully chosen words. Since then, the enormous expansion of our territory has increased the diversities of the different parts. The interests of California are less the interests of Massachusetts now than were the interests of Georgia at the beginning of the century. The separate interests will increase and the common interests diminish in number with every expansion of territory. How little of accountability to the country the members of Congress, in fact, feel, may be judged by the following late examples :

A bill to take from a large part of the country the safeguard of the habeas corpus was defeated only by the most persistent obstruction from the minority in the last days of a Congress. And yet who, of all the members that voted for the infamous bill, lost a reelection for that reason? Another bill—which, in fact, became a law—took from the Treasury an immense sum, estimated at more than a hundred millions, to pay what were called Arrears of Pensions, but which were not arrears or dues of any kind. Who that voted for this legislative robbery lost by it? While we write, a bill has passed the two Houses appropriating eleven millions for what are called Rivers and Harbors, some of which have no claim to national recognition. Senator Thurman called it a scheme “to reelect members of Congress.” How was it expected to work? A member from a district whose people want employment, and a plentiful disbursement of public money, expects to win popularity and votes by giving them the opportunity. These constituents of his contribute little to the Treasury, but get much out of it. He votes away other people’s money, the contributions of other constituencies than his own; but to them he owes no accountability. Of the seventy-six senators, only forty-four voted; and of these, twenty-six Democrats and six Republicans voted for the bill, eight Democrats and four Republicans voted against it, which would leave nine Democrats and twenty-three Republicans who did not vote at all. This lack of responsibility is in the nature of things. There were probably few members of either House who thought that their own constituents would suffer from the measure, and so rebuke them for it.

Senators and representatives feel no accountability to the country at large, because there is none in fact. Each member

stands or falls by his own constituents, and by them alone. Such, at least, is the general feeling. The only way to make that accountability minister to the general good, is to make every measure fall upon the constituents of each member as it falls upon the constituents of others, that is to say, to give him authority to legislate only upon the common concerns of all. It may, of course, sometimes happen that legislation upon these common concerns may not affect all parts of the country in the same way or to the same degree, but that does not change the principle of legislating only upon concerns that are common to all, and in some way affect all.

The American theory of government is self-government. This means that the individual remains his own master in all that concerns only himself. When his actions interfere with the actions of another, the two act together. Whatever may have been the origin of the social compact or body politic, this is the theory on which joint action is founded, whether of two persons or of many. Whatever concerns one alone is for him to do; whatever concerns his neighbor and himself is for the two to do together; and so on through all aggregations of individuals until we arrive at that final organization which we call the State. When that stage is reached, States may unite with other States for the management of common concerns, and so form a central union, federative or national. This does not mean that Massachusetts shall govern South Carolina, nor South Carolina Massachusetts; but that each shall govern itself in all that pertains to itself; and that in matters that pertain to both, the two shall govern both. For, if in a matter that concerned both, the two should not of choice act together, and one should act for both; or if the two, acting separately, should come into collision, and one force the other to yield, the principle of self-government would be lost. The separate concerns of the States are for the States to manage, each by itself: common concerns are for all together, that is, for the United States. This is the theory of American government carried to its logical results. In the smallest political organization,—as, for example, a New England township,—the members vote in person; in the larger townships the members vote by representatives. But the principle of the limitation of power is the same in both. The town Assembly is limited by the statutes of the State; the State Assembly is limited by the State constitution, and the Federal Assembly, by the Federal Constitution.

The interests common to all the States are, as has been already said, few in number. The framers of the Constitution undertook to enumerate them, and the enumeration they agreed upon is fixed in that organic act, there to remain forever, unless changed by amendment. The aim of this instrument was to keep the States at peace with each other, and to present them as one in their relations abroad. General taxation, war, treaties, foreign and inter-State commerce, postal service, bankruptcy, copyright and patent right, naturalization, coinage; these were objects of common concern. To such objects the Federal Government was to be limited. Its founders were sagacious men; they walked in the light of the soundest philosophy; they saw that a republican government could not be maintained over so large a country without a strict limitation of its powers. It has never yet been done; there is no reason to suppose that it ever will be done; there is every reason to suppose that it will not. Our country, at the close of the last century, covered as large a part of the earth's surface as Great Britain and Ireland, Germany, France, and Spain; it is now nearly as large as the whole of Europe. Let us suppose a representative government, with plenary powers over Great Britain and Ireland, France, Spain, Italy, Switzerland, Germany, Belgium, Holland, Denmark, Russia, Austria, Sweden, and Norway, and ask ourselves how long it would probably last. Should we not agree that it would not last a decade?

We hear sometimes of a federation of the world. A closer union of the nations, through some great council, by which international disputes might be settled, and war prevented, is the dream of philanthropists and the hope of the Christian believer. But how could such a consummation be brought to pass? Only by a treaty binding the good faith of the nations to abide by the advice of a consultative body upon a few subjects, neither wounding national susceptibilities nor trenching upon national autonomy. Imagine representatives from the United States, Great Britain, the Germanic Empire, the Austrian double-headed monarchy, the Russian autocracy, and patriarchal China, meeting in one chamber to discuss the affairs of so heterogeneous a constituency. What affairs would they discuss? None but those in which they have a common concern; they would not so much as lay a little finger upon the separate interests of any nation. If ever a scheme of closer union should be brought about (and I am one of those who think it possible to bind the nations together closer

than they have ever yet been bound; the Berlin congress went a long way toward it), it will be through some special organization, having as its vital principle the absolute autonomy of all the nations. If it be possible to agree upon a representative body limited to the consideration of a few subjects of universal concern, and so limited that the boundary can never be overpassed, then, and then only, such a union may be possible.

The parallel between a federation and a constitutional union is of course incomplete. The difference between them lies in the power of the latter to enforce the decisions of the majority. But the principle upon which the harmony of the members depends is the same.

This is a Federal republic. In the late presidential canvass an occasional sign was put up that "This is a nation, not a league." The sign was true in one sense, but not in all. A nation, strictly considered, is a political body, sovereign in all things over all its members. Ours is *not* such a nation; it is sovereign to the foreign world in most things, but even then not in all. It could not cede to Great Britain, for example, a part of Maine without Maine's consent. In our domestic world, it is sovereign only in a few things. In most of the concerns of our daily life, it is not more sovereign over us than is England or France. A fashion is creeping in slowly, and no doubt carelessly, of using the words "United States" as a nominative singular; some persons have been bold enough, indeed, to say "the United States is." This is as bad in grammar as in fact. The Constitution says nothing of the kind: "No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under *them*," is the language of the ninth section of the first article; and "Treason against the United States shall consist only in levying war against *them*, or in adhering to *their* enemies," is that of the third section of the third article. The letter signed by Washington and addressed by the convention to the Continental Congress, inclosing the Constitution, contained this paragraph: "It is obviously impossible in the Federal government of these States to secure all rights of the independent sovereign to each, and yet provide for the interests and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest; the magnitude of the sacrifice must depend as well on the situation and the circumstance as on the object to be attained. It is at all times difficult to draw, with precision, the lines



between those rights which must be surrendered and those which must be reserved." The words "Federal" and "Confederacy," as applied to the Union, were of frequent occurrence in our earlier public documents. Washington used the adjective "federal" to designate the territory belonging to the United States in the District of Columbia; Jefferson spoke of the "establishment of our present Federal Government;" Madison of the "various forms of our extended Confederacy;" John Quincy Adams of the "constitutional power of the Federal Government;" Jackson of the "patronage of the Federal Government;" Van Buren of the "concerns of the whole Confederacy;" Harrison of the "powers which have been granted to the Federal Government;" Tyler of the "office of President of this Confederacy;" Polk of the "safeguard of our Federative compact;" Pierce of the "sole reliance of the Confederacy;" and Buchanan of the "construction of the Federal Constitution."

The strong tide that for twenty years has been setting toward centralization is no doubt due in part to the surges of the civil war. The nation was struggling for life, and those who administered its affairs did not always measure their power by their right. This was deplorable, for the Constitution was made for war as well as peace, and there was never a necessity for stretching its powers beyond the tension which itself allowed. But the civil war is not responsible for all that has happened. A National Bank and a Tariff came before the war; the interference with the elections has come since; the other measures, if they grew out of the war, were continued long after the last gun had been fired. There are causes tending to centralization more permanent than our great conflict of arms.

It must not be forgotten that this is a new form of government, though it has lasted nearly a century, yet that is but a span in the life of a people. Think of it as we may, we cannot help confessing to ourselves that the system under which we live is even yet an experiment. Ours is the only federal republic that ever embraced a continent and governed fifty millions of inhabitants. Never before have so many great and opulent States, with such diversities of interests, been brought together under one national authority. Flanked by an ocean on either side, stretching with Alaska almost from the torrid to the frozen zone, yielding every fruit of the bounteous earth, and displaying the fairest forms of hill and plain, lake and river, it stands a

world in itself, with all its diversities of industrial and social life. The interests of the people in such a country must be as various as the wide and diverse regions they inhabit.

The pressure upon the Federal Government for the exercise of its powers comes from four different quarters: the performance of the natural functions of government, the interests of majorities, the demands of party, and the schemes of monopolists. Against the operation of these causes, what is there to oppose usurpation or to compel moderation? Nothing but the limitations of the Constitution, the resistance of the coördinate departments, and the vigilance of the people.

The limitations of the Constitution are plain enough in themselves. It would be hard to find language more carefully chosen or more easily understood. The framers of the Constitution thought that they had found the means of limiting effectually the powers of Congress, when they had thus enumerated them, and established two coördinate departments—the Executive and Judicial—as a counterpoise to the Legislature. In practice, however, the counterpoise has not proved equal. For this there are two reasons: one, that the presidential veto may be overridden by two-thirds of each House, as, in fact, it has been on the occasions when it was most needed; and the other, that the Supreme Court has either given way before the determined will of Congress, or has so construed the discretion of the Legislature, in the choice of means, as to leave that department of the Government to define and limit its own powers in particulars the most important to the equipoise of the Constitution. Thus, when President Johnson vetoed the Reconstruction bill, it was promptly repassed by more than two-thirds of each House, and he was impeached, and barely escaped with his office, for opposing the will of Congress; and the Supreme Court was prevented from pronouncing its judgment upon the same measure, by the defiant attitude of Congress, and its repeal of the law which gave the court jurisdiction. In another instance, that court was made, by seating two new judges, to reverse its previous decision against the constitutionality of the act which made Government promises to pay equal to payment. It seems, therefore, a vain thing to look to either the President or the Supreme Court for effectual resistance to the determined will of Congress. In theory, indeed, an act of Congress against the Constitution is a nullity. Chief-Justice

Marshall said that long ago, in these memorable words, which form part of his opinion in *Marbury against Madison* :

"This original and supreme will" [that is, the will of the people] "organizes the government, and assigns to different departments their respective powers. It may either stop here or establish certain limits not to be transcended by those departments. The government of the United States is of the latter description. The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation."

All these limitations and supposed safeguards have not sufficed, however, to defend us against the strong tendencies to centralization, because the all-important qualification, that in the choice of means Congress has in fact discretion the most ample, leaves the legislative department of the Government in possession of a mass of powers, original and incidental, for the safe and wise exercise of which the States and the people have no adequate guaranty but in themselves.

Vigilance is born of intelligence and will. They who exercise it must not only watch, but determine. In this way, and this only, can the tendency to centralization be arrested.

That it must be arrested, if we would preserve our liberties, seems too plain for discussion. If there be any certain conclusion to be drawn from history, it is that a consolidated government cannot be established on so wide a domain, unless it be monarchical. In "*Metternich's Memoirs*" is a remarkable passage on the condition of Germany after the downfall of Napoleon :

"The idea of the state must rest on the basis of a united sovereignty, whether that of a personal sovereign or that of the sovereignty of the people. The personal sovereign may reign over several countries different in their provincial laws and in their local interior administration. One sovereign people cannot rule over another."

This seems to us the statement of a political principle applicable to men everywhere, and especially to us: "One sovereign people cannot rule over another."

In a public address, several years ago, General Garfield estimated the number of Federal office-holders at more than a

hundred thousand. Our population was then about forty millions, which would place in the Federal service one in every four hundred of all the people. Only a fifth of the persons living are adult men; so that one in eighty of these adults is fastened on the Federal Treasury, and probably every fiftieth family is dependent upon it. Add to this that, according to the prevalent theory, the dependence is precarious, because the troops of office-holders follow the fortunes of their party, taking or losing office as it rises or falls. Is it any wonder that the country is yearly burdened with more patronage, and driven on to the exercise of more power?

The disposition, of course, increases with the indulgence. Every encroachment is a temptation to a new one. How soon successful resistance will come, it is impossible to foretell. Let us hope that it will come by the peaceful exercise of the ballot in the ordinary elections. It may come in the form of a revision of the Federal Constitution, or it may come—which heaven avert—with violent convulsion. One thing appears to be certain, and that is that the country will not be divided. Under some form of government, and with more or less of freedom, the United States will maintain their dominion from sea to sea. If encroachments go on increasing, the pressure upon particular sections will become heavier and heavier: there will be on the one hand a demand for a stronger government to put down resistance, and on the other a demand, in order to protect minorities, for the establishment of some authority which is not controlled by fluctuating assemblies. At least, it may be set down as not consistent with the nature of things and the order of events, that a hundred millions of people, covering twenty-four degrees of latitude and fifty-eight of longitude, with all the diversities of soil, climate, and productions which our country displays, should continue to be governed in all their concerns by an assembly of representatives, who cannot in some way be all reached by all the constituencies.

We have said that the great ends of government are unity and freedom. The former we are sure of; for it does not seem possible that any causes now discernible can divide the American people into two or more republics, nations, confederacies, or other forms of political organization. We are united and shall remain united under some form of government, whatever it may be. Are we as sure of our freedom as of our unity? That depends upon the preservation of the States in the plenitude of their power,

as they stand under the Constitution, nothing added and nothing taken away by unjust interpretation or unlawful force. Security for person and property is more important even than unity. For this security we depend upon the States. To be a State of the American Union is to be sovereign in everything within its own borders, except where the sovereignty in a certain limited number of things has been granted to the common government of all the States. Sovereign States should be kept as a good old-fashioned expression. Long may it live! *State rights* got a bad name because they were pushed to excess—nullification was a folly, and secession was a crime—but because this folly and this crime were committed in the *name* of State rights, it would be folly to infer that the name may not have a good meaning and represent a useful thing. “Confederacy” was a name abhorred when we were fighting the Confederate armies, but we are not now to be frightened by a word. The ceiling of the Representatives’ Chamber in the Capitol is divided into panels of glass, through which the sunlight pours into the room, and on which are painted, one after another, the names and escutcheons of the several States whose representatives sit below. There is the emblem of New York and her motto “*Excelsior*,” and there the emblem of Virginia and her motto “*Sic Semper Tyrannis*”; Massachusetts, with sword uplifted, writes “*Ense petit placidam sub libertate quietem*”; and Pennsylvania displays her eagle crowned with light, and proclaims “Virtue, Liberty, and Independence.” Every escutcheon set above the chamber represents a sovereign State, which has a history, a pride, and a policy of its own. In the same ceiling are vacant panels, left for future States as they are expected to come in long procession. A thoughtful person, looking up at them, cannot but ask himself, Will they ever be filled? That depends on the men who sit beneath, and on the people who send them there.

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